

**BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT,
ASANSOL.**

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer,
C.G.I.T-cum-L.C., Asansol.

REFERENCE CASE NO. 19 OF 2008

PARTIES: Smt. Guddi Devi
Vs.
Management of Madhabpur Colliery of ECL

REPRESENTATIVES:

For the Union/Workman: Mr. Rakesh Kumar, President, Koyala Mazdoor Congress.
For the Management of ECL: Mr. P. K. Das, Adv.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 27.09.2023

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A W A R D

In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour, vide its Order **No. L-22012/370/2007-IR(CM-II)** dated 12.05.2008 has been pleased to refer the following dispute between the employer, that is the Management of Madhabpur Colliery under Kajora Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

THE SCHEDULE

“ Whether the action of the management of Madhabpur Colliery under Kajora Area of M/s. ECL in not providing employment to Smt. Guddi Devi, wife of Late Raj Mohan Rajbhar is legal and justified? To what relief is the dependent of the deceased workman entitled? ”

1. On receiving Order **No. L-22012/370/2007-IR(CM-II)** dated 12.05.2008 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 19 of 2008** was registered on 22.05.2008 / 13.04.2009 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

2. Smt. Guddi Devi has filed her written statement on 29.06.2010 through Mr. Rakesh Kumar, Union representative. It is contended in her written statement that Late Rajmohan Rajbhar, her husband was a permanent employee at Madhabpur Colliery under Kajora Area of Eastern Coalfields Limited (hereinafter

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referred to as ECL). On account of his absence from duty from 12.01.2005 due to his illness and medical treatment at his native place he could not attend his duty. The reason of absence was informed to the management of ECL through co-workers. However, a Show Cause Notice was issued to Rajmohan Rajbhar on 29/30.04.2005 on the charge of his unauthorized absence from duty. It is her case that no Charge Sheet was served upon the workman and Rajmohan Rajbhar died on 05.11.2005 due to illness at his native place. The information of his death was communicated to the management under registered post on 06.12.2005 after completion of 'Shraddh Ceremony' according to Hindu rights. After the death of Rajmohan Rajbhar management decided to dismiss him from his service and issued a letter of dismissal bearing no. KA:PM:C-6:10:3177 dated 13.12.2005 issued by the Chief General Manager, Kajjora Area, ECL. For obvious reason the letter of dismissal could not be served upon him. The workman therefore was on roll of employment of the company during his lifetime, before passing of the order of dismissal.

3. According to the guidelines and provisions of National Coal Wage Agreement (hereinafter referred to as NCWA) - VII, the dependent of the workman who died in harness was entitled to an employment. Smt. Guddi Devi, wife of Late Rajmohan Rajbhar, who was thirty-two years of age at the time of death of her husband applied for her employment.

4. During structural meeting of the company with the union representatives it was decided on 02.07.2008 that if a workman died while he was on roll of the company then one dependent will be provided with employment but in the present case despite submission of application by Smt. Guddi Devi no employment was provided to her and the management on their own accord delayed the entire procedure. It is contended that the Departmental Enquiry was held ex-parte against Late Rajmohan Rajbhar. No Second Show Cause Notice was served upon

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him and the punishment imposed upon a dead person is a violation of natural justice having no binding upon the deceased workman and his legal heirs.

5. The management of ECL contested the case by filing a written statement dated 18.01.2016 wherein it is asserted that the claim of Smt. Guddi Devi for employment is not valid. According to the management of ECL Rajmohan Rajbhar was terminated from service on 13.12.2005 for his misconduct and long absence from service. A death report was submitted before the management only on 20.08.2009 that the employee had died on 05.11.2005. Therefore, no question of providing employment to the dependent of the workman arose. It is urged that the management is justified in not providing employment to the dependent of the deceased workman.

6. Smt. Guddi Devi in support of her case has filed her affidavit-in-chief reiterating the facts stated in the written statement and examined herself as the workman witness – 1. She was recalled on 10.01.2023 for her re-examination-in-chief as relevant documents were not placed during her earlier evidence. Several documents have been produced by the dependent of the workman which are as follows :

- (i) Photocopy of the Medical prescription of Rajmohan Rajbhar which is marked as Exhibit W-1.
- (ii) Photocopy of the letter dated 28.01.2006 submitted by Smt. Guddi Devi addressed to the Agent of Madhabpur Colliery claiming employment in place of her deceased husband, as Exhibit W-2.
- (iii) Photocopy of the Cremation Certificate dated 05.11.2005 is produced, as Exhibit W- 3.
- (iv) Photocopy of the Death Certificate of Rajmohan Rajbhar, as Exhibit W-4.

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- (v) Photocopy of the letter dated 20.09.2011 issued by the Manager, Madhabpur Colliery addressed to the District Magistrate, Gorakhpur, Uttar Pradesh for verification of death of Rajmohan Rajbhar, as Exhibit W-5.
- (vi) Photocopy of the letter dated 29.03.2012 issued by the Additional District Magistrate (City), Gorakhpur after verification of the Death Certificate, as Exhibit W-6.
- (vii) Photocopy of the letter dated 07.10.2013 issued by the Senior Manager (Personnel), Kajora Area addressed to the Welfare Officer, Madhabpur Colliery for deletion of the name of Rajmohan Rajbhar from the roll of Madhabpur Colliery against his death on 05.11.2005 instead of his dismissal on 13.12.2005, as Exhibit W-7
- (viii) Photocopy of the legal heirship Certificate issued by the Block Development Officer, Uruwa, Gorakhpur, Uttar Pradesh as Exhibit W-8.
- (ix) Photocopy of the minutes of the meeting held between representatives of Koyala Mazdoor Congress and management on 02.07.2008 to consider the proposal for employment issued by the Personnel Manager (IR), ECL on 08.11.2008, as Exhibit W-9.
- (x) Photocopy of the minutes of the meeting held between representatives of Koyala Mazdoor Congress and management on 11.04.2007 for providing employment to the dependent of Late Rajmohan Rajbhar issued by the Personnel Manager (Empl/IR), ECL on 29.05.2007 as Exhibit W-10, in three pages collectively.
- (xi) Photocopy of the declaration of the dependent family members of Late Rajmohan Rajbhar, as Exhibit W-11.
- (xii) Photocopy of the letter dated 07.02.2006 issued by the General Secretary of Koyala Mazdoor Congress, addressed to the Assistant Labour Commissioner (Central), Asansol, raising an Industrial Dispute for providing employment to Smt. Guddi Devi, as Exhibit W-12

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- (xiii) Photocopy of the Reply submitted by the Agent of Madhabpur Colliery dated 25.10.2006 before the Assistant Labour Commissioner (Central), Asansol, as Exhibit W-13.
- (xiv) Photocopy of the minutes of meeting dated 29.05.2007, held in the office of the Chairman-cum-Managing Director, Santoria Head Office on 11.04.2007 where the Area Office of Kajora was advised to send details of the case of Late Rajmohan Rajbhar along with his Death Certificate and Order of Dismissal for a decision and to process the proposal for employment of the dependent of the deceased employee as Exhibit W-14 in four pages collectively (same as Exhibit W-10).

7. Mr. Ashish Mohan, management witness has filed affidavit-in-chief and was examined as Management Witness-1. In his evidence the witness has tried to justify the dismissal of the workman despite the fact that there are substantial material and Police Verification Report from the Additional District Magistrate (City), Gorakhpur, Uttar Pradesh confirming the death of Rajmohan Rajbhar on 05.11.2005. In course of evidence he has produced the following documents :

- (i) Photocopy of the Chargesheet dated 29/30.04.2005 issued to the workman is marked as Exhibit M-1.
- (ii) Photocopy of the 1st, 2nd, and 3rd Notice of the enquiry are marked as Exhibit M-2, M-3, and M-4 respectively.
- (iii) Photocopy of the copy of Postal Envelop along with A/D under which the Notice were sent to the workman are marked as Exhibit M-5, M-6, and M-7.
- (iv) Photocopy of the Enquiry Proceeding along with the findings in five pages is collectively marked as Exhibit M- 8.
- (v) Photocopy of the Second Show Cause Notice dated 15.11.2005 issued to the workman, as Exhibit M-9.

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- (vi) Photocopy of the Dismissal Letter dated 13.12.2005 issued to Rajmohan Rajbhar by the Chief General Manager, Kajora Area, as Exhibit M-10.

- (vii) Photocopy of the postal envelope along with A/D under which the Letter of Dismissal of Rajmohan Rajbhar was sent at his address and returned to the sender with report of the Postman that the addressee had died. The document in two pages is marked, as Exhibit M-11.
- (viii) Photocopy of the letter of Smt. Guddi Devi addressed to the Manager of Madhabpur Colliery, claiming employment as a dependent, as Exhibit M-12.
- (ix) Photocopy of the Death Certificate of Rajmohan Rajbhar, as Exhibit M-13.
- (x) Photocopy of the letter dated 22.12.2008 issued by the Dy.C.P.M., Kajora Area to the Agent of Madhabpur Colliery, as Exhibit M-14.

8. In the backdrop of this case the departmental enquiry and dismissal of the workman has no significance nor any importance as he died while he was on the roll of employment of the company. So far as the Enquiry Proceeding is concerned the management witness admitted that he has no document to show that he Charge Sheet was served upon the chargesheeted employee nor could he adduce evidence to establish that the Second Show Cause Notice dated 15.11.2005 was served upon the workman.

9. In course of cross-examination of Smt. Guddi Devi, the management has not refuted her statement in the affidavit-in-chief that on 06.12.2005 she had informed the management of ECL about her husband's death through a registered letter.

10. The Minutes of Meeting dated 29.05.2007 held between representatives of management namely, Mr. A. Chattapadhyay, Director (Personnel), Mr. S.K. Singh,

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CPM(P&IR), and MR. T. B. Raju, PM(Empl./IR) with the union representatives including Mr. Rakesh Kumar, General Secretary of Koyala Mazdoor Congress at the Office of the Chairman-cum-Managing Director on 11.04.2007, where in page no.- (3), paragraph – (8) it was noted that Late Rajmohan Rajbhar, ex-worker of

Madhabpur Colliery, workman died before his dismissal and that direction should be issued for processing the employment proposal of the dependent as the workman was on the roll of the company at the time of death. It is further recommended in the Minutes of Meeting that death of the employee was prior to the dismissal order, accordingly Area Office was advised to send the details of the case along with Death Certificate and Order of Dismissal for decision and to process the proposal of employment to the dependent of the deceased employee. It is evident for the Minutes of Meeting that the management of ECL was aware of the fact that Rajmohan Rajbhar had died before processing of order of dismissal and he was in harness at the time of death. The question of legitimacy and propriety of dismissal therefore is not within the purview of consideration any longer. It is an admitted fact that a workman who dies before his dismissal is considered to be on the roll of the company on the date of his death. Therefore, the contention of the management in their written statement that the death report of Rajmohan Rajbhar was submitted before the management on 20.08.2009 after his dismissal is unfounded and does not hold good.

11. From Exhibit W-2 I find that Smt. Guddi Devi submitted an application addressed to the Agent of Madhabpur Colliery / Khas Kajora Group under Kajora Area of ECL on 28.01.2006 informing that her husband died on 05.11.2005. She prayed for employment on compassionate ground as dependent of Late Rajmohan Rajbhar under the provision of NCWA-VII. The application was received by the representative of the management and it appears to have been forwarded to the Head Office of ECL at Sanctoria on 02.08.2006. I have no hesitation to hold that there was absolutely no delay on the part of the dependent wife of the ex-workman

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in submitting her application before the management of ECL, which she did within a span of only three months from the date of death of her husband.

12. The sequence of events and course of procedure resorted to by the management appears to have contributed to the delay in settling the issue of providing employment to the dependent of the deceased workman. Minutes of

Meeting held between the management representative and union representative of Koyala Mazdoor Congress dated 29.05.2007 has been produced in four pages as Exhibit W-14. Paragraph – (8) in Page no. 3 of the Minutes of Meeting disclose that that Late Rajmohan Rajbhar, ex-worker of Madhabpur Colliery, workman died before his dismissal and direction should be issued for processing the employment proposal as workman was on the roll of employment of the company at the time of death. Union informed that the death of the employee was prior to dismissal, Area Office was advised to send the details of the case along with death Certificate and Order of Dismissal for decision and to process the proposal for employment to the dependent of the deceased employee. Dy. CPM of Kajora Area was accordingly instructed to take action. This document has not been challenged in course of cross-examination therefore the decision taken in the office of the Chairman-cum-Managing Director, Po-Disergarh, Dist-Burdwan on 11.04.2007 in presence of the management representatives holds good.

13. Management had occasion to consider the Death Certificate of Rajmohan Rajbhar issued by the Government of Uttar Pradesh, wherein his date of death was recorded as 05.11.2005 and the death was registered soon thereafter on 13.11.2005. In another meeting held in the office of Chairman-cum-Managing Director on 02.07.2008, the representatives of the management and union agreed upon the fact that Rajmohan Rajbhar, ex-workman of Madhabpur Colliery died before his dismissal and the union requested to issue direction to process the employment proposal on the ground that the workman was on roll of the company

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on the date of his death. It was advised to consider the employment proposal along with full facts regarding date of death and date of dismissal after verification of genuineness of death on priority basis and put up for competent decision to dispose of the claim on merit. The Deputy Personnel Manage (Empl)Ed. and Personnel Manager (I/C) of Kajora Area were marked to take necessary action. The document in seven pages has been produced on behalf of the petitioner / dependent of the workman as Exhibit W-9. On juxtapose of the two Minutes of

Meeting dated 29.05.2007 (Exhibit W-14) and 08.11.2008 (Exhibit W-9) it appears that the management of the company was fully aware about the claim for employment but did not make any progress from May, 2007 to November, 2008 and valuable time had been wasted by only instructing the office for verifying the genuineness of the death certificate and date of dismissal. It appears from Exhibit W-5, a copy of letter dated 20.09.2011 issued by the Manager of Madhabpur Colliery addressed to the District Magistrate of Gorakhpur, Uttar Pradesh that a request was made for verification of the Death Certificate of Rajmohan Rajbhar, ex-employee of Madhabpur Colliery of ECL. In reply to the said application dated 20.09.2011 the Additional District Magistrate (City) of Gorakhpur in his letter dated 29.03.2012 addressed to the Manager of Madhabpur Colliery, which is marked as Exhibit W-6 enclosed the letter of Block Development Officer, Uruwa, Gorakhpur dated 09.01.2012 verified and informed that Rajmohan Rajbhar expired on 05.11.2005. It is evident from such communication that the date of death of Rajmohan Rajbhar is 05.11.2005. Accordingly, the question whether the workman died before issuance of the letter of dismissal on 13.12.2005 has been set at rest.

14. The Senior Manager (Personnel) Kajora Area in his letter No. KA/APM(IC)/C-6/23/997 dated 07.10.2013 addressed to the Welfare Officer, Madhabpur Colliery referred to the Note Sheet bearing no. 320/819 dated 11.02.2012/01.04.2013 initiated by the Welfare Officer (T), Madhapur Colliery for

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deletion of the name of Rajmohan Rajbhar from the roll of Madhabpur Colliery against 'Death on 05.11.2005' instead of 'Dismissal on 13.12.2005', on the captioned subject matter. It was further stated that a Reference case No. 19 of 2008 (The management of Madhabpur Colliery, Kajora Area vs their workman), on the self-same cause of action was pending before the Central Government Industrial Tribunal -Cum- Labour Court, Asansol and the Welfare Officer was requested to inform the status of the Reference case No. 19 of 2008, if pending before the Central Government Industrial Tribunal -Cum- Labour Court, Asansol

and to forward the written statement filed on behalf of the management. The copy of the letter has been produced as Exhibit W-7. It would transpire from the letter dated 07.10.2013 that the management of ECL proceed in a lackadaisical manner in arriving at any decision. Having participating in the two meetings held on 11.04.2007 and 02.07.2008 no headway was made in arriving at any decision but the entire issue was kept pending. It is evident that the delay was caused at the instance of the management in not considering the prayer of Smt. Guddi Devi for employment.

15. The Service Record of Late Rajmohan Rajbhar was maintained by the management of the company since 1992. It appears from such record (Exhibit W-11) that Smt. Guddi Devi was twenty-two years in 1992. Therefore, her age at the time of death of her husband in the year 2005 was thirty-five years. Even after having specific information about the dependents of the deceased workman as well as the verification report from the office of the District Magistrate, Gorakhpur and the Additional District Magistrate (City), Gorakhpur the management of ECL did not consider the prayer for employment of his widow. While contesting the Industrial Dispute management harped upon the of Enquiry Proceeding and the Order of Dismissal. Mr. Ashish Mohan, Management Witness – 1, representing the management has cast away the issue of death of Rajmohan Rajbhar and insisted upon his dismissal by way of a Departmental Proceeding. In course of his

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evidence management witness – 1 admitted that he was unable to produce document to show that Charge Sheet was served upon Rajmohan Rajbhar. He stated that the workman did not participate in the Enquiry Proceeding and management witness - 1 was also unable to produce any document to prove that the Second Show Cause Notice issued to the workman on 15.11.2005 was actually served upon him. The witness deposed that the letter of dismissal sent under the registered post was returned with report of the Postman that the addressee had died. Though the management witness in his affidavit-in-chief averred that the management is totally justified in dismissing the workman from

service and did not act in an arbitrary manner or in violation of natural justice, I am of the view that the dismissal of Rajmohan Rajbhar after his death was invalid, inoperative and void. The management of the company under the established principle of law is bound to consider Rajmohan Rajbhar to be in the roll the company on the date of his death.

16. The claim of the Union is based on the provisions of Clause 9.3.2 and 9.3.3 of NCWA-VI, which continues to be operative under NCWA-VII. The wife of deceased employee is eligible for employment under the scheme of NCWA. On close scrutiny of the evidence adduced on behalf of the dependent of the deceased workman it appears from Exhibit W-2 that Smt. Guddi Devi had informed the death of her husband to the Agent of Madhabpur Colliery, Kajora Area of ECL and forwarded a copy of the same to CMD of ECL, DP of ECL, CGM, Kajora Area, Manager of Madhabpur Colliery. The intimation was received on 02.03.2006 at ECL Headquarters, Sanctoria and bears a seal of the same. In course of cross-examination the document remained uncontroverted. Therefore, it is clear to us that Smt. Guddi Devi had submitted her application before the management of ECL claiming employment within a period of six months from the date of death of her husband. The management pleaded its inability to consider the prayer for employment on the ground of delayed claim but the delay appears to have

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occurred at the instance of the management for which the dependent of the deceased workman is not responsible. It is true that in case of compassionate employment delay defeats the claim as held by various courts but in the present case the management of ECL has deprived the family of the deceased employee by not extending any assistance in time which they have agreed upon at the time of framing rules and the provisions of NCWA. The management cannot take advantage of their own fault and their contributory negligence in not dealing with the issue within a frame of time otherwise the provisions of NCWA will lose their credibility and would be rendered futile. In my considered view the management of ECL is liable to pay monetary compensation to Smt. Guddi Devi from the date

of death of her husband Rajmohan Rajbhar till she is provided with a suitable employment consistent with her capacity.

17. It is to be borne in mind that the commitment of the company in providing employment and monetary compensation to female dependent under Clause 9.5.0 of NCWA – VI and VII and also to provide an employment to one dependent of the worker who dies while in service according to the Clause 9.3.2 of NCWA-VII is an outcome of a collective decision of the management and Union. Under no circumstance the decision of providing employment should be treated as a subjective issue to frustrate the cause of the employee.

18. In view of the facts and circumstances, I find it to be a fit case where the management of ECL should be stopped from taking the plea of “delay” for not providing employment to the widow of the deceased employee. The management of ECL is therefore directed to provide suitable employment to Smt. Guddi Devi within three months from the date of communication of the Notification of the Award and pay monetary compensation from the date of death of her husband till providing her with an employment.

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Hence,

ORDERED

that the Industrial Dispute is accordingly allowed in favour of Smt. Guddi Devi, wife of Late Rajmohan Rajbhar on contest. An award be drawn up in the light of my above findings. The management of ECL is directed to provide suitable employment to Smt. Guddi Devi within three months from the date of communication of the Notification of the Award and also disburse monetary compensation to her from the date of death of her husband till providing her with

an employment. Let copies of the Award in duplicate be sent to the Ministry of Labour, Government of India, New Delhi for information and Notification.

(ANANDA KUMAR MUKHERJEE)

Presiding Officer,
C.G.I.T.-cum-L.C., Asansol.